

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

----- X
ELENA RUTH SASSOWER and DORIS L. SASSOWER,
Individually and as Director and President, respectively,
of the Center for Judicial Accountability, Inc., and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,
Acting *Pro Bono Publico*,

Plaintiffs-Appellants,

App. Div. #: 2012-00126
App. Div. #: 2012-05360
App. Div. #: 2013-05353

- against-

Suffolk Co. # 10-12596

GANNETT COMPANY, INC., The Journal News, LoHud.com
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,
D. SCOTT FAUBEL,

Defendants-Respondents,

KEITH EDDINGS and DOES 1-10,

Defaulting/Non-Appearing Defendants.

----- X

PLEASE TAKE NOTICE that upon the annexed affidavit of plaintiff-appellant *pro se* ELENA RUTH SASSOWER, sworn to on September 23, 2013, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, plaintiffs-appellants will make a motion at the Appellate Division, Second Department at 45 Monroe Place, Brooklyn, New York 11201 on October 18, 2013 at 10:00 a.m., or as soon thereafter as the parties or their counsel may be heard, for an order:

1. disqualifying the four-judge appellate panel that rendered the August 21, 2013 decision & order herein, consisting of Justice Peter B. Skelos, as Justice Presiding, and Justice Daniel D. Angiolillo, Justice Sheri S. Roman, and Justice Sylvia Hinds-Radix, for demonstrated actual bias and interest, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and vacating their August 21, 2013 decision & order

NOTE: On the return date all motions and proceedings are deemed argued. Oral argument is not permitted (22 NYCRR 670.5[b]).

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by reason thereof for fraud and lack of jurisdiction; and, if denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon their fairness and impartiality;

2. granting reargument, pursuant to CPLR §2221 and this Court's Rule §670.6(a), of the panel's August 21, 2013 decision & order and vacating it for fraud and lack of jurisdiction;
3. vacating the August 21, 2013 decision & order, pursuant to CPLR §5015(a)(4) for "lack of jurisdiction", by reason of the panel's disqualification for interest;
4. vacating the August 21, 2013 decision & order, pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party";
5. imposing maximum costs and \$10,000 sanctions, pursuant to 22 NYCRR §130-1.1 et seq. against defense counsel, Satterlee, Stephens, Burke & Burke, LLP, for its frivolous and fraudulent September 24, 2012 opposition brief and advocacy at the May 6, 2013 oral argument;
6. granting leave to appeal to the Court of Appeals, pursuant to this Court's Rule §670.6(c)
7. granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

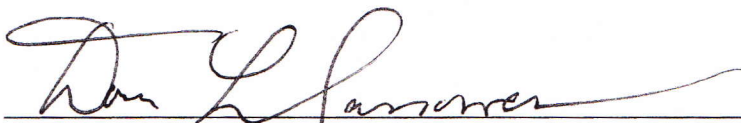
PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b), answering papers, if any, are required to be served at least seven days prior to the October 18, 2013 return date of this motion, *to wit*, October 11, 2013.

Dated: September 23, 2013
White Plains, New York

Yours, etc.



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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

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----- X
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the first-named individual appellant *pro se*, fully familiar with all the facts, papers, and proceedings heretofore had. This affidavit is submitted in support of appellants' accompanying notice of motion.

2. This motion is necessitated by criminal conduct of a four-judge appellate panel consisting of Justice Peter B. Skelos, as Justice Presiding, and Justice Daniel D. Angiolillo, Justice Sheri R. Roman, and Justice Sylvia Hinds-Radix, whose August 21, 2013 decision & order (Exhibit A) decided appellants' appeals from two-short form orders of Suffolk County Supreme Court Justice

Peter Fox Cohalan (Exhibit B-2, B-3, B-4). Such decision – the workproduct of judges whose combined annual salary is \$704,000 – is nothing less than a judicial fraud, fashioned on flagrantly false conclusory assertions that the four panel justices know to be false from the particularized facts, law, and legal argument presented by appellants, all uncontested by defense counsel or uncontested *as a matter of law*, and all concealed by the panel's decision. This includes:

- concealing ALL the facts germane to appellants' entitlement to Justice Cohalan's disqualification for demonstrated actual bias, sought by their December 21, 2011 motion – most importantly, appellants' 30-page analysis of Justice Cohalan's September 22, 2011 short-form order, demonstrating the fraudulence of virtually each and every sentence of its six pages;
- concealing ALL the facts germane to appellants' entitlement to Justice Cohalan's disqualification for interest – most importantly, that appellants' December 21, 2011 motion had sought his disqualification on that ground; and
- concealing ALL the facts germane to appellants' entitlement to disclosure by Justice Cohalan – most importantly that appellants' December 21, 2011 motion had made such request;
- concealing ALL applicable law and legal principles germane to the judicial disqualification/disclosure issues.

3. By these concealments, the four-judge panel upholds Justice Cohalan's April 23, 2012 short-form order denying appellants' December 21, 2011 motion for his disqualification and for vacatur of his September 22, 2011 short-form order. Thus, the decision baldly declares – without a single substantiating fact – that the motion was “properly” decided and that appellants “failed to set forth any proof of bias or prejudice” and “failed to establish any grounds for vacating”. These are outright lies, *readily-verifiable* from the most cursory examination of the record. Likewise, the decision's other declarations, equally bald and false.

4. In every sense, the decision is a criminal act, stealing from appellants, in monetary terms, \$50 million dollars – the sum sued for by the four causes of action of their verified complaint [R-48]. As stated by the prefatory quote of their appellants' brief:

“‘[A] plaintiff’s cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.’, *Link v. Wabash Railroad Co*, 370 U.S. 626, 646 (1962), U.S. Supreme Court Justice Hugo Black writing in dissent, with Chief Justice Earl Warren concurring.” (Appellants’ brief, at p. 1)

5. “[T]he protections of the Constitution” begin with a fair and impartial tribunal – which the panel was not and knew it was not. Pursuant to §100.3E of the Chief Administrator’s Rules Governing Judicial Conduct and Judiciary Law §14, the four panel justices were each duty-bound to have disqualified themselves, *sua sponte*. That they had before them a timely and sufficient application for disqualification and disclosure, which I presented at the May 6, 2013 oral argument of the appeals, makes their misconduct all the more egregious.

6. Treatise authority holds:

“As a general rule...once a challenged judge has...been made the target of a timely and sufficient disqualification motion, he immediately loses all jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the change.”, §22.1, Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company.¹

7. *As a matter of law*, the panel justices were without jurisdiction to decide the appeals without ruling on appellants’ application that they disqualify themselves or make disclosure. What they did, instead – reflective of their knowledge that they could not address these issues without conceding them – was to conceal the application in their August 21, 2013 decision and then make manifest the actual bias and interest that was its subject.

8. By this motion, appellants seek adjudication of the unadjudicated disqualification/disclosure application, now supplemented by the facts presented by this affidavit and

¹ See, also, §22.4.1 of the same treatise, “Void Orders”:

“When a judge presumes to take substantive action in a case...after he should have recused himself but did not, any such action is often considered a nullity and any orders issued by such a judge are considered absolutely void for want of jurisdiction.”

its annexed exhibits, incorporated herein by reference. Among these exhibits is appellants' 13-page analysis of the August 21, 2013 decision, establishing, *prima facie*, the panel's pervasive actual bias, corrupting any semblance of appellate process to produce a decision:

"so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

9. The law with respect to disqualification/disclosure is already before the panel, as appellants' December 21, 2011 motion to disqualify Justice Cohalan and for disclosure by him was accompanied by a memorandum of law exclusively devoted to the subject [R-751-758].

10. This motion is timely. This Court's August 21, 2013 decision & order was served upon me with notice of entry on August 22, 2013, by mail². (CPLR §5513(b); this Court's Rule §670.6(a), CPLR §2103(c)).

11. For the convenience of the Court, a Table of Contents follows:

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² Such mailed service was not made to the address I had indicated on the appellants' brief and reply brief.

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**The May 6, 2013 Oral Argument & the Actual Bias the Panel Exhibited
in Asking Not a Single Question & Denying Rebuttal to Correct
Defense Counsel's Factual Misstatements**

12. The panel's August 21, 2013 decision (Exhibit A) identifies these appeals as having been "Argued – May 6, 2013". Absent, however, is any reference to the content of that argument – most importantly, the oral application I made for the panel justices to disqualify themselves and, if denied, to disclose their relationships and interests impacting upon their fairness and impartiality.

13. Although the Court live-streams and records the audio/video of oral argument internally for the benefit of staff attorneys and other justices, it does not make its audio/video recordings available to litigants and the public. According to the Court's Clerk, "as of April 1, 2011, due to budgetary constraints, [the Court is] no longer producing DVD recordings" (Exhibit C-2).

14. Consequently, I am unable to furnish the audio/video evidence of my oral application on May 6, 2013 and of the disparate manner in which the panel handled oral argument of appellants' appeals in contrast to oral argument of other appeals on that day's calendar.

15. Fortunately, most of what I said is preserved in the form of my written oral argument (Exhibit D-1), which I read to the panel, *verbatim*, excepting the footnotes and copious record references. At the conclusion of the argument, I handed up four copies for each of the four panel justices – and also provided a copy for defense counsel. All copies included the indicated enclosures, these being the first seven pages of my moving affidavit in support of appellants' December 21, 2011 motion (Exhibit D-2 [R-589-595]), which included eight paragraphs under the

heading “Disclosure of Relationships and Interest”, and appellants’ April 15, 2013 criminal complaint to U.S. Attorney Preet Bharara (Exhibit D-3).

16. Following my reading of the text, excluding the footnotes and record references, I expressly asked that my oral application for disqualification of the justices and disclosure be considered in lieu of a formal motion, stating that if the panel wished such formal motion, I would furnish one. Neither then nor thereafter did the panel advise that a formal written motion would be necessary. Nor would it have been necessary, as the obligation of disqualification and disclosure is self-executing, falling upon judges to make independently, irrespective of any request therefor.

17. It must be noted that by the May 6, 2013 date of the oral argument, the briefs and record on appeal had been before the Court for seven months. According to the Court’s informational webpage “How a Case is Decided” (Exhibit E), the briefs and record would have gone through multiple layers of review prior to oral argument:

- A preliminary review by the Court’s Law Department, noting “the issues raised by the briefs, and assess[ing] them in terms of difficulty and complexity.”
- Review by a court attorney assigned to the Law Department, who “prepares a confidential written report for the panel of Justices that is to determine the cause” which “contains a summary of the facts and an analysis of the issues” and which is “circulated to the panel in advance of the date the cause is calendared for submission or argument”;
- Review by the justices in advance of the calendar date, described under the heading “Chambers Work”, as follows:

“In advance of the calendar date, each Justice on a day calendar panel receives copies of the records or appendices and the briefs of all of the parties for each cause scheduled for that date, as well as a copy of the confidential report prepared for each case. The briefs are checked against the record for accuracy, and the Justices may take notes to assist them on oral argument. A Justice may circulate a supplemental report and/or proposed decision from his or her chambers.”

18. The “written confidential report” with its “summary of facts and analysis of the

issues” should have flagged that this Court’s justices would face their own disqualification/disclosure issues on these appeals – and that one justice was absolutely disqualified: Justice Skelos. In any event, the “written confidential report” would have necessarily summarized what the panel’s justices could not avoid seeing for themselves upon examining the briefs and record in advance of the May 6, 2013 oral argument, *to wit*:

(a) that appellants’ appeals were fully substantiated by the record;

(b) that the record established flagrant misconduct by Supreme Court Justice Cohalan and defense counsel Satterlee, Stephens, Burke & Burke; and

(c) that a resounding judgment, in appellants’ favor, was compelled, *as a matter of law*, including summary judgment on their four causes of action for libel, libel *per se*, journalistic fraud, and institutional reckless disregard for truth and, additionally, removal of the “ACCURACY” policy from the Journal News’ masthead as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22A.

19. How striking then, in this landmark case whose adjudication by any fair and impartial tribunal would have made law:

- by reinforcing and refining standards of judicial and attorney conduct and disqualification,
- by recognizing the journalistic fraud and institutional reckless disregard for truth causes of action, and
- by clarifying and updating libel and libel *per se* jurisprudence,

that none of the four panel justices interrupted my record-referenced oral argument with a single question. Nor did they question defense counsel about what the record established as to the defense misconduct, including by its opposition brief on these appeals – as to which my reply brief requested maximum \$10,000 sanctions and costs pursuant to 22 NYCRR §130-1.1 *et seq.* Nor did any of the four justices even request his response to what I had said, at oral argument, as to the threshold issue of defense counsel’s disqualification as a defendant DOE. Instead, all four justices allowed defense

counsel to proceed, unchallenged, with statements whose falsity would have been known to them from the record and appellants' briefs.

20. Indeed, upon defense counsel's conclusion of his oral argument, when I asked to be permitted to correct his misstatements of fact, Presiding Justice Skelos denied my request, notwithstanding his announcement when the session opened that rebuttal is permitted where it is to correct misstatements of fact, for which record references must be supplied. None of Justice Skelos' three fellow panelists came to my aid by taking exception.

21. The disparate fashion in which the panel handled oral argument of my appeals was already evident to me from oral argument of the two appeals that preceded mine on the calendar: *People v. Maynard*, #2010-07152, and *People v. Canales*, #2008-09708.³ In each of those appeals, the panel justices interjected with questions about the "fairness of the process"; about standards and "looking at the process as a whole"; about whether there was prosecutorial misconduct; about where an issue had been "argued in the brief"; and about issues that were "matters of law". For this reason, when oral argument of my appeals concluded, I remained in the courtroom, observing and taking notes as to oral argument of the other appeals on the calendar.

22. My conclusion, after doing so, bore out my initial impression that oral argument of my appeals was qualitatively different.⁴ And to establish this by irrefutable audio/video proof, I

³ *Maynard* was decided on July 31, 2013. As of this date, there is no decision on *Canales*.

⁴ #5: *Aurora Contractors, Inc. v. West Babylon Public Library*, 2011-09338 (June 27, 2013 affirmed): Skelos: "This record is kind of sparse"; and "in the absence of being in the record, I don't know where we're going"; that there was no "piece of paper to document assertions" and a question to defendants as to whether if a paper had been attached "would that have made a difference?";

#8: *Ahmed v. Fulton Street Brothers Realty, LLC*, 2012-06516 (June 19, 2013, affirmed): "we have what is written down on a piece of paper and that is what guides us"; Skelos: "We don't get to intent if it's ambiguous"; comments by Angiolillo and Skelos "we can't go outside the record"; "that's outside the record"; "is the operating agreement in the record?". Appellant requested to make two corrections of fact – to which Skelos responded "sure".

#10: *GMAC Mortgage, LLC v. Bisceglie*, #2012-06438 (September 18, 2013 modified): record-based

went directly from the courtroom to the clerk's office and wrote out a written request to the Court's Chief Clerk Aprilanne Agostino for the audio/video recording (Exhibit C-1). Clerk Agostino's written response, the following day, from was that "due to budget constraints, we are no longer producing DVD recordings." (Exhibit C-2).

23. In the months between the May 6, 2013 oral argument and August 21, 2013 decision, the panel had a further reminder of my written oral application for its disqualification and disclosure – as it was enclosed with a July 4, 2013 letter of my co-appellant mother, Doris L. Sassower, which stated, in pertinent part:

"...I take this opportunity to reiterate the *threshold* application my daughter presented at pp 3-4 of her oral argument, i.e., that based on the record before this Court, the four judges comprising the appellate panel: Presiding Justice Peter Skelos and Associate Justices Daniel Angiolillo, Sheri Roman, and Sylvia Hinds-Radix, respect their mandatory disclosure and disqualification duties under §§100.3E and F of the Chief Administrator's Rules and Judiciary Law §14 – most particularly, Presiding Justice Skelos, whose disqualification for interest is absolute." (Exhibit F-2, underlining in the original).

24. By letter dated July 29, 2013, Deputy Clerk Karen Hochberg Tommer returned to my mother the copy of the oral argument with exhibits that she had enclosed with her July 4, 2013 letter. In so doing, Deputy Clerk Tommer identified them only as "unsolicited documents that you annexed to your letter" and "items...in the nature of post-argument submissions which may not be filed

questioning by Roman, Angiolillo, Roman, Hinds-Radix;

#11: *Bond Safeguard Insurance Company v. Forkosh*, 2012-01633 (June 12, 2013, modified; pending motion to reargue/leave to appeal to court of files-7/31/13; returnable 8/16/13): record-based questioning by Angiolillo, Skelos, Hinds-Radix; request for rebuttal: Skelos: "If you have misstatement of fact, happy to hear you.", to which counsel responded "No, just a misunderstanding".

#12: *Deutsche Bank National Trust Company v. Kuldip*, 2012-08007 (July 24, 2013, reversed): due process issues, no questions.

#13: *Viva Development Corp. v. United Humanitarian Relief Fund*, #2012-02315 (July 10, 2013, affirmed): record-based questioning by Hinds-Radix, Roman, Angiolillo; request to rebut; no rebuttal, though incorrect fact

#14: *Murillo v. Porteus*, #2011-07668 (July 31, 2013, modified): record based questions from Skelos; record-based comment from Roman; Skelos stating: "we can't without an appeal on that issue; w can't

#17: *Xu v. Gold Coast Freightways, Inc.*, #2012-04672 (June 19, 2013, affirmed):

without permission of the Court (see 22 NYCRR 670.20[i])”, thereupon stating: “The Court has denied such permission...” (Exhibit F-3).

25. As these alleged unidentified “post-argument submissions” were the same submissions as I had handed up at oral argument, their rejection by the panel served no purpose but to remove from the appellate record this additional copy of my May 6, 2013 application for disqualification/disclosure by the panel’s justices. Indeed, this might have been the ONLY copy in the appellate record since, according to the Clerk’s Office, upon rendering the August 21, 2013 decision, the panel was free to discard all four copies of the written oral argument I handed up on May 6, 2013.

**The August 21, 2013 Decision & Order is *Prima Facie* Proof
of the Appellate Panel’s Actual Bias, Mandating its Disqualification and, if Denied,
Disclosure by its Four Justices of Interests and Relationships**

26. The panel’s August 21, 2013 decision and order bears out precisely what I stated at the May 6, 2013 oral argument: “...the record is for naught – as is all the law, if this tribunal is not fair and impartial” (Exhibit D-1, at p. 3).

27. Although the May 6, 2013 oral argument suffices to establish the fraudulence of the panel’s decision – much as the June 1, 2011 oral argument before Justice Cohalan suffices to establish the fraudulence of his appealed-from two short-form orders (Br. 48-53) – appellants herewith annex an 13-page analysis of the decision, examining its material paragraphs, line-by-line (Exhibit G), so as to demonstrate the willfulness with which the panel jettisoned all cognizable adjudicative standards to render a decision that is a judicial perjury.

28. Should the panel not disqualify itself for demonstrated actual bias and vacate its August 21, 2013 decision based on the analysis, the panel must – consistent with its ethical duty –

respond to its 13 pages of fact, law, and legal argument and the further particulars of this motion, with disclosure by each of the four justices of the interests and relationships that propelled such an indefensible decision.

29. As this panel has not denied my assertion at oral argument that:

“the eight paragraphs of appellants’ December 21, 2011 motion setting forth relationships and interests that Justice Cohalan was duty-bound to disclose if he did not disqualify himself [R-592-597] essentially all apply to this panel” (Exhibit D-1, at p. 3, underlining in original),

disclosure should begin with what is set forth by those eight paragraphs as relates to them:

- (a) the justices’ “personal and professional relationships with appellate judges who – like defendant Journal News – covered up the corruption of White Plains City Court Judge Brian Hansbury, *readily-verifiable* from the City Court record of the landlord/tenant case *McFadden v. Elena Sassower*” – among these Justice Skelos, heading an appellate panel that included Justice Randall Eng, now this Court’s Presiding Justice.
- (b) The justices’ financial interest in judicial pay raises placing them in an adversarial relationship with appellants, who, propelled by what the Skelos-led appellate panel did in *McFadden v. Sassower* [R-669-723], became the foremost opponents of judicial pay raises – the consequence of which is that the justices have an interest in denying appellants a victory that would enhance their ability, reputationally and financially, to fight those raises;
- (c) The justices’ financial interest in trashing the journalistic fraud of action so as to protect Gannett and other media from the rightful consequences for their willful and deliberate cover-up of the hoax of the judicial pay raise ‘crisis’ and of corrupt judicial decisions of Judges Hansbury and Friia, whose baselessness is replicated in their own decisions.

30. As reflected by those paragraphs – and by the substantiating documents to which they refer – it was the misconduct of Justice Skelos and his fellow panel justices in *McFadden v. Sassower* [R-697-703; R-673-676] that gave rise to appellants’ opposition to the judicial pay raises and brought them into contact with Justice Skelos’ brother, Temporary Senate President Dean Skelos in 2011 [R-704-707, R-720-723]. My May 6, 2013 oral argument pointed out (Exhibit D-1, at p. 4) that this had thereafter developed into a direct adversarial relationship between appellants and

Temporary Senate President Skelos: On March 30, 2012, we commenced a lawsuit against him and New York's other highest public officers, including Chief Judge Lippman, to void the judicial pay raises and achieve judicial accountability, entitled *Center for Judicial Accountability, Inc. v. Cuomo, et al.* The verified complaint (¶¶5(c)(d)(e)) expressly identifies this case, *McFadden v. Sassower*, and *Sassower v. New York Times* as cases whose records establish a corrupted judicial process. On April 15, 2013, we filed a criminal complaint against Senate Temporary President Skelos and the other *CJA v. Cuomo* defendants based on *CJA v. Cuomo* and on their further corruption with respect to the judicial pay raises and the judiciary budget and appropriations bill for fiscal year 2013-2014 (Exhibit D-3).

31. At oral argument (Exhibit D-1, pp. 3-4), I noted that common to the appeals herein and the appeals in *McFadden v. Sassower* and *Sassower v. New York Times* is that they all involve the integrity of court proceedings and issues of judicial disqualification and disclosure. Indeed, any fair and impartial determination of the appeals herein would have resulted in rulings necessarily exposing the flagrant corruption that had taken place with respect to those very issues in *McFadden v. Sassower* and *Sassower v. New York Times*. The judicial misconduct committed by this Court's justices on those appeals – including Justice Skelos as Justice Presiding in *McFadden v. Sassower* – created an interest inferring with the panel on these appeals articulating standards and fundamental principles of judicial conduct, attorney conduct, and disqualification, let alone applying them.

32. As hereinabove stated (at ¶9), the law pertaining to judicial disqualification and disclosure is also already before the panel, embodied in appellants' memorandum of law that accompanied our December 21, 2011 motion to disqualify Justice Cohalan and for disclosure [R-751-758]. The law applies equally to this motion to disqualify the panel and for disclosure – with the facts to which that law applies presented herein.

Appellants' Entitlement to Reargument & Vacatur

33. In seeking reargument pursuant to this Court's Rule §670.6(a), appellants are required to:

“concisely state the points claimed to have been overlooked or misapprehended by the court, with appropriate references to the particular portions of the record or briefs and with citation to the authorities relied upon.”

34. At bar, the panel “overlooked or misapprehended” the entirety of what was before it in the record, in the briefs, and at oral argument – and appellants’ accompanying analysis of the decision more than meets the standard for reargument – and for vacating the decision, upon the granting of same.

**Appellants' Entitlement to Vacatur Pursuant to CPLR §5015(a)(4)
for “Lack of Jurisdiction” by Reason of the Panel’s Disqualification for Interest**

35. Appellant’s memorandum of law accompanying their December 21, 2011 motion for Justice Cohalan’s disqualification, presented the law with respect to disqualification for interest, as follows:

“Judiciary Law §14 governs statutory disqualification for interest. In pertinent part, it states:

‘A judge shall not sit as such in, or take any part in the decision, of an action, claim, matter, motion or proceeding...in which he is interested...’

It is long-settled that a judge disqualified by statute is without jurisdiction to action and the proceedings before him are void, *Oakley v. Aspinwall*, *supra*, 549, *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 AD2d 614 (2nd Dept. 1978), 1A Carmody-Wait 2d §3:94.” [R-753].

36. Unless this panel can refute the showing made by my May 6, 2013 oral argument and its appended and referred-to documentary proof (Exhibit D), further summarized hereinabove, that its justices are disqualified for interest – and none more directly so than Justice Skelos – appellants are entitled to vacatur of the August 21, 2013 decision & order pursuant to CPLR §5015(a)(4).

Appellants' Entitlement to Vacatur Pursuant to CPLR §5015(a)(3) for "Fraud, Misrepresentation, or Other Misconduct of an Adverse Party"

37. The pervasive litigation fraud of defense counsel Satterlee, Stephens, Burke & Burke, not only before Justice Cohalan, but before this Court, warrants vacatur pursuant to CPLR §5015(a)(3). The particulars of its ongoing fraud are fully particularized by appellants' reply brief – and the showing therein is germane not only to its opposition brief, but to its misrepresentations at oral argument, which I was precluded from correcting at that time.

Appellants' Entitlement to Maximum Costs and \$10,000 Sanctions, Pursuant to NYCRR §130-1.1 *et seq.* against Defense Counsel for its Fraudulent Opposition Brief and Oral Argument

38. Appellants' entitlement to maximum costs and \$10,000 sanctions, pursuant to 22 NYCRR §130-1.1 *et seq.*, expressly requested by their October 19, 2012 reply brief, was also fully documented therein. Based thereon, it was frivolous and sanctionable *per se*, for defense counsel to have even appeared at the May 6, 2013 oral argument in opposition to appellants' appeals. His regurgitated deceptions at the oral argument only reinforce appellants' entitlement to that relief.

Appellants' Entitlement to Leave to Appeal to the Court of Appeals

39. Pursuant to this Court's Rule §670.6(c):

“Motions for leave to appeal to the Court of Appeals shall set forth the questions of law to be reviewed by the Court of Appeals and, where appropriate, the proposed questions of law decisive of the correctness of this court's determination or of any separable portion within it.”

40. If this panel actually believes that without ruling on my May 6, 2013 application for disqualification and disclosure by its four judges it could decide appellants' appeals, it should be willing for the Court of Appeals to address the issue. The question should be framed as follows:

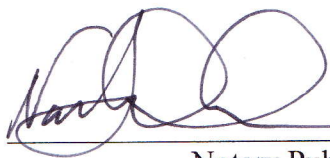
Whether it is misconduct, *per se*, for a judge to rule on a case without adjudicating an application before him for his disqualification and for disclosure of relationships and interests bearing upon his impartiality – indeed by concealing the very existence of such application in his written decision?

with the further question:

Whether this motion is sufficient, *as a matter of law*, to establish the disqualifying actual bias and interest of the appellate panel – and its duty to disqualify itself and vacate same?


ELENA RUTH SASSOWER

Sworn to before me this
23rd day of September 2012



Notary Public

